SINGAPORE REPORTS

HONG LEE v. GOLDEN DRAGON SHIPPING (SINGAPORE) PTE. LTD.

[C.A. (Wee Chong Jin C.J., Winslow and Kulasekaram JJ.) November 28, 1975]

[Singapore — Civil Appeal No. 8 of 1975]

Admiralty — Vessel under arrest — Caveat against release of vessel filed — Warrant of arrest set aside — Effect of setting aside of warrant of arrest on caveat — Whether withdrawal of caveat constitutes consideration — R.S.C. 1970, O.70 rr. 12 & 13.

The appellants who were the plaintiffs in a District Court Summons entered a caveat against the release of the ship "Golden Elephant" which was under arrest in admiralty *in rem* proceedings under warrant of arrest which was subsequently set aside. The respondents in the admiralty proceedings applied for the release of the ship and the appellants were informed of this. The "Golden Elephant" was not however released.

The respondents entered into discussions with the appellants' solicitors. They agreed to pay the court charges in connection with the arrest and requested the appellants to release the "Golden Elephant." In purported pursuance of the agreement the appellants withdrew the caveat and the "Golden Elephant" was released.

The respondents then refused to pay the court charges as agreed. The appellants commenced proceedings in the District Court against the respondents to recover the court charges and obtained judgment. On appeal against the decision of the District Court the High Court held that upon the warrant of arrest being set aside the caveat had no legal effect and accordingly the agreement was unenforceable.

The appellants appealed against the decision of the High Court.

Held: (1) the caveat which the appellants had filed against the release of the ship was in force though the warrant of arrest had been set aside;

(2) the respondents obtained the release of the vessel by the appellants withdrawing their caveat on the undertaking given by the respondents to pay the court charges. Accordingly there was a binding agreement between the appellants and the respondents. The judgment of the District Court in favour of the appellants was therefore right.

COURT OF APPEAL.

P. Selvam (*Yap Boh Lim* with him) for the appellant.

C. Arul for the respondent.

Kulasekaram J. (delivering the judgment of the court): This is an appeal from a judgment of the High Court reversing the decision of the learned District Judge in District Court Summons No. 840 of 1973 whereby the appellants as plaintiffs in that action obtained judgment against the respondents/defendants in the sums of $4,630.20 cts. and $1,071 as costs.

The appellants' claim in the District Court Summons was based on a compromise agreement between the appellants and the respondents. The events and facts giving rise to the present appeal are briefly these.

On October 6, 1972 in Admiralty action in rem Suit No. 181 of 1972 the solicitors for the plaintiffs in that suit who were the Tharros Shipping Corporation S.A. filed a praecipe requesting a warrant to arrest the ship "Golden Elephant." The defendant in that suit was described as the owner of the ship "Golden Elephant." The Registrar issued a warrant of arrest and the ship was arrested on the same day.

On October 14, 1972 the appellants filed a praecipe for a caveat against the issue of a release to this ship "Golden Elephant" which was then under arrest.

On October 17, 1972 the appellants, in Suit No. 2313 of 1972, sued the respondents for a sum of $34,600 as being the price of goods and necessaries supplied by the appellants to the respondents' ships and vessels at the request of the respondents. On November 2, 1972 the appellants entered judgment in default of appearance against the respondents in the sum claimed with costs.

On November 3, 1972 the defendants in Admiralty in rem Suit No. 181 of 1972 obtained an order of court setting aside the warrant of arrest. This order of court was served on the Sheriff on November 9, 1972 but the Sheriff refused to release the ship as there was no order of release.

On or about November 28, 1972 the solicitors for the plaintiffs in Admiralty in rem Suit No. 181/72 applied to the registry for the release of the said vessel and the registry in turn by letter dated December 2, 1972 informed the appellants as caveators of this and also drew their attention to Order 70 Rule 13(2). No order of release of the vessel was issued on November 28, 1972 as erroneously mentioned in their letter. However, the parties were not misled by it as they all knew that the ship had not been released on that date.

Subsequent to this the appellants through their solicitors and the respondents through Mr. Chu, a director of the respondent company, and a Mr. Teo, the chief clerk of the respondent company had discussions which resulted in an agreement whereby amongst other things the respondents agreed to pay certain court charges in connection with the arrest and detention of this ship and requested the appellants in turn to release the vessel "Golden Elephant" of which the respondents were the owners' agents. Evidence of this agreement is contained in the letter of the respondents dated December 28, 1972 to the appellants' solicitors. In purported pursuance of this agreement the appellants withdrew their caveat and an order for the release of the vessel was issued and the vessel was released on December 28, 1972. These court charges and costs amounting to $4,630.20 cts. had been paid by the appellants in the first instance. The respondents having failed to abide by the agreement the appellants sued the respondents in the District Court and obtained judgment.

The learned judge of the High Court in allowing the appeal of the respondents from the decision of the District Court held that the caveat against release that the appellants entered was of no legal effect once the warrant of arrest of the ship was set aside by order of court dated November 3, 1972. According to him if the appellants wished to have any rights over the ship after the warrant of arrest was set aside then they would have to take out another warrant of arrest. On that basis he went on to find that the alleged agreement by the respondents to pay the court charges for which the appellants were liable in the first instance was unenforceable for want of consideration. The

withdrawal of caveat which had no legal effect by the appellants conferred no benefit on the respondents. For these reasons the respondents' appeal to the High Court was allowed and the judgment of the learned District Judge in favour of the appellants set aside. The respondents were also given the costs of the appeal and the costs below.

The appellants now appeal to this court to have this order of the High Court set aside and the judgment of the learned District Judge restored.

The appellants have set out two grounds of appeal:—

(a) That the learned judge erred in law in holding that the caveat had no legal effect after the warrant of arrest was set aside.

(b) That the learned judge erred in law in holding that the agreement between the appellants and the respondents was unenforceable.

It is convenient at this stage to set out here Order 70 rule 12 which relates to release of property under arrest in Admiralty Proceedings and Order 70 rule 13 relating to caveat against release.

"Release of property under arrest (O.70, r.12).

12.—(1) Except where property arrested in pursuance of a warrant of arrest is sold under an order of the court, property which has been so arrested shall only be released under the authority of an instrument of release (in this Rule referred to as a 'release'), in Form 160, issued out of the Registry.

(2) A party at whose instance any property was arrested may, before an appearance is entered in the action, file a notice withdrawing the warrant of arrest and, if he does so, a release shall, subject to paragraphs (3) and (5) be issued with respect to that property.

(3) Unless the court otherwise orders, a release shall not be issued with respect to property as to which a caveat against release is in force.

(4) A release may be issued at the instance of a party interested in the property under arrest if the court so orders, or, subject to paragraph (3), if all the other parties to the action in which the warrant of arrest was issued consent.

(5) Before a release is issued the party entitled to its issue must —

(a) if there is a caveat against release in force as to the property in question, give notice to the party at whose instance it was entered or his solicitor requiring the caveat to be withdrawn; and

(b) file a praecipe in Form 161 requesting issue of a release.

(6) Before the property under arrest is released in compliance with a release issued under this Rule, the party at whose instance it was issued must, in accordance with the directions of the Sheriff, either pay the costs, charges and expenses due in connection with the care and custody of the property while under arrest or give a written undertaking to do so.

(7) The court, on the application of any party who objects to directions given to him by the Sheriff under paragraph (6), may vary or revoke the directions.

Caveat against release and payment (O.70, r.13)

13.—(1) A person who desires to prevent the release of any property under arrest in an action *in rem* and the payment out of court of any money in court representing the proceeds of sale of that property must file in the Registry a praecipe in Form 162, and on the filing of praecipe a caveat against the issue of a release with respect to that property and the payment out of court of that money shall be entered in the caveat book.

(2) Where the release of any property under arrest is delayed by the entry of a caveat under this Rule, any person having an interest in that property may apply to the court by motion for an order requiring the person who procured the entry of the caveat to pay to the applicant damages in respect of the loss suffered by the applicant by reason of the delay, and the court, unless it is satisfied that the person procuring the entry of the caveat had a good and sufficient reason for so doing, may make an order accordingly."

It will be observed that by virtue of Order 70 rule 12(1) the property under arrest, in this case the ship, will only be released under an instrument of release in Form 160 issued out of the Registry except when the property under arrest is sold under an order of court.

In our view the warrant of arrest having been set aside on November 3, 1972, the party interested in the release should have applied to the Registry for an instrument of release and also given notice to the appellants, the caveators, requiring them to withdraw the caveat as required by Order 70 rule 12(5).

As the owners of the vessel the defendants in Admiralty in rem Suit No. 181 of 1972 had not taken any further step for the release of the ship after the order of court setting aside the warrant of arrest the solicitors for the plaintiffs prepared an instrument of release and applied to the registry for the release of the said vessel. The Registry on December 2, 1972 by letter informed the appellants as caveators of the application for release and drawing their attention to Order 70 rule 13(2). The solicitors for the plaintiffs also informed the caveators, the appellants herein, by letter dated December 4, 1972 as required by Order 70 rule 12(5).

The appellants however did not withdraw the caveat nor did they move to have a writ issued and have the ship rearrested on a fresh warrant of arrest probably because there were discussions going on between them and the respondents who were the agents of the owners of the vessel.

In this connection we wish to quote a note from *Roscoe's* Admiralty Practice, fifth edition at page 314 on the old English Order 29 rules 8 and 10 which is almost in *pari materia* with the present English Order 75 rule 14 and our order 70 rule 13: —

"It should be borne in mind also that a caveat is only a temporary step to give time for formal proceedings, such as intervention in an action or the issue of writ, to be taken. Therefore, if a caveat is kept in force and no proceedings taken, the party desiring the release of property or the payment of money out of court will be able to obtain an order that some step be taken in a definite time, otherwise the caveat to be withdrawn."

In addition of course under Order 70 rule 13(2) any interested party in the property can also apply for damages suffered due to the wrongful entry of the caveat or wrongful delay caused by the caveat being kept in force.

In our view when the respondents undertook to pay the court charges the caveat which the appellants had filed against the release of the ship was in force though the warrant of arrest had been set aside. The respondents on behalf of the owners of the vessel obtained the release of the vessel by the appellants withdrawing their caveat on the undertaking given by the respondents to pay the court charges.

In our view the learned District Judge was right in holding in the first instance that there was a binding

agreement between the appellants and the respondents and giving judgment in favour of the appellants. The learned District Judge also held that the charges claimed by the appellants in that action were the very charges that the respondents undertook to pay.

In the circumstances this appeal will be allowed and the judgment of the High Court set aside and the original judgment of the District Court restored. The appellants shall have the costs of this appeal and the costs of the courts below.

Appeal allowed.

Solicitors: *Yap & Yap; Rodyk & Davidson.*

RE JOSEPH FRANCIS LOPEZ

[O.C.J. (Chua J.) January 27, 1976]
[Singapore — Originating Motion No. 5 of 1975]

Medical Practitioner — Professional misconduct — Infamous conduct — Medical certificates — Certificates issued signed by unqualified person — Medical Registration Act (Cap. 218).

The appellant, a registered medical practitioner, faced disciplinary charges before the Medical Council of Singapore under the provisions of the Medical Registration Act (Chapter 218). The disciplinary charges alleged that the appellant was guilty of infamous conduct in a professional respect, the allegations being that on various occasions between November 1973 and January 1974 he did allow one S. S. Pillai of his clinic to issue and sign medical certificates to various patients when the said S. S. Pillai was not a registered medical practitioner within the meaning of the Act. At the conclusion of the disciplinary enquiry, the Medical Council deliberated and came to the unanimous decision that the appellant was guilty of the disciplinary offences as charged and unanimously decided to remove the appellant's name from the Medical Register. Costs were also awarded against the appellant. The appellant appealed against the decision of the Medical Council on the following grounds:—

1. The decision of the Medical Council was contrary to the weight of the evidence adduced.
2. The Council's solicitor had at the close of his case failed to make out a *prima facie* case against the appellant on any of the charges preferred against him, and the Council should therefore have dismissed the said charges, and not called upon the appellant's defence as it did.
3. The Council's Legal Assessor had, at the close of the Council's Solicitor's case, wrongly directed the Council on the burden of proof required to be discharged by the Council's Solicitor in the proceedings, and on the meaning of "proof beyond a reasonable doubt."
4. The sentence imposed by the Council was manifestly excessive in the circumstances.

At the hearing of the appeal, the appellant abandoned the third ground of his appeal and proceeded with the other grounds.

Held, dismissing the appeal; (1) the appeal lies of right by the statute and the terms of statute do not limit or qualify the appeal in any way, so that the appellant is entitled to claim that it is in a general sense nothing less than a rehearing of his case and a review of the decision;

(2) notwithstanding the generality of the above language, the actual exercise of the jurisdiction is severely limited by the circumstances in which it can be invoked. The appeal is not by way of rehearing in the sense that the witnesses are heard afresh or the evidence gone over again. This, amongst other things, mean that there is a heavy burden upon an appellant who wishes to displace a verdict on the grounds that the evidence alone makes the decision unsatisfactory;

(3) beyond a bare statement of its findings of fact, the Disciplinary Committee does not in general give reasons for its decision as in the case of a trial in the High Court by a judge alone from which an appeal by way of rehearing lies to the Court of Appeal. It follows from this that the only circumstances in which an appellate court can reverse a view of the facts taken by the Disciplinary Committee would be a case where, on examination, it would appear that the committee had misread the evidence to such an extent that they were not entitled to make a finding in the state of the evidence presented before them;

(4) the Legal Assessor who assists the committee at its hearing is not a judge, and his advice to the committee is not a summing up, and no analogy with a criminal appeal against a conviction before a judge and jury can properly be drawn. The legal assessor simply advises the committee in camera on points of law and reports his advice in open court after he has given it. The committee under its president are masters both of law and of the facts and what might amount to misdirection in law by a judge to a jury at a criminal trial does not necessarily invalidate the committee's decision. Where a criticism is made of the legal adviser's account of his advice the question is whether it can fairly be thought to have been of sufficient significance to the result to invalidate the decision;

(5) in the result, although the jurisdiction conferred by statute is unlimited, the circumstances in which it is exercised in accordance with the rules approved by Parliament are such as to make it difficult for an appellant to displace a finding or order of the committee unless it can be shown that something was clearly wrong either (i) in the conduct of the trial or (ii) in the legal principles applied or (iii) unless it can be shown that the findings of the committee were sufficiently out of tune with the evidence to indicate with reasonable certainty that the evidence had been misread.

Cases referred to:-

(1) *Bhandari* v. *Advocates Committee* [1956] 3 All E.R. 742.

(2) *Libman* v. *General Medical Council* [1972] A.C. 217.

(3) *McCoan* v. *General Medical Council* [1964] 1 W.L.R. 1107.

ORIGINATING MOTION.

C. S. Wu for the appellant.

Sachi Saurajen for the Medical Council of Singapore.

Chua J.: This is an appeal against the decision of the Singapore Medical Council that the appellant, Dr. Joseph Francis Lopez, had been guilty of infamous conduct in a professional respect and that his name should be removed from the Register of Medical Practitioners.

There were nine charges against the appellant. The charges were that on November 10, 1973, November 12, 1973, December 18, 1973, January 2, 1974, January, 11, 1974, March 14, 1974, May 9, 1974, June 5, 1974 and July 12, 1974, the appellant allowed one S. S. Pillai, his employee in his clinic known as The Lopez Clinic at Jurong, to issue and sign medical certificates to three persons when the said S. S. Pillai was not a registered medical practitioner.

The appellant is a medical practitioner in general practice and he had three clinics — The Lopez Clinic at Thong Teck Building, Scotts Road; Commonwealth Clinic & Nursing Home at Commonwealth Crescent and The Lopez Clinic at Taman Jurong (hereinafter referred to as the Jurong Clinic). There was at the material dates no resident doctor at the Jurong Clinic. S. S. Pillai is a qualified Hospital Assistant Grade II and at the material dates was the only employee at the Jurong Clinic.